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UNITED STATES SUPREME COURT

PETITION FOR CERTIORARI

The State of New Hampshire)
)
vs)
)
Edward P. Bentley)

No. 7217
(US CofA, 1st Dist.)

Filed by Appellant/ Defendant

Edward P. Bentley, Pro Se
Box 284, Beverly,
Massachusetts

UNITED STATES SUPREME COURT

The State of New Hampshire)
)
vs)
)
Edward P. Bentley)

No. 7217
(US CofA, 1st Dist.)

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PETITION FOR CERTIORARI

1. Reason for Petition. In this particular case, a question arises whether appellant, under USC 28, Par. 1443, properly has a right of Appeal to the Supreme Court, or may only use a Petition for Certiorari. The United States Court of Appeals, in reply to a Petition for Rehearing, has ordered a stay of mandate pending application for certiorari. Appellant believes he has the right of Appeal, however, and has filed proper Notice of Appeal with the Court of Appeals, including reasons why such Appeal is believed proper. Appellant intends to proceed with such Appeal.

2. However, in view of the Court of Appeals apparent ruling regarding certiorari, and in view of the importance in law of the precedents involved in the case, appellant has prepared, as an alternate to his appeal if the Supreme Court should also rule against such right of Appeal (under 28 USC Par. 2103), a properly prepared Petition for Writ of Certiorari, in accordance with USSC Rules 19 through 23.

3. Appellant's address is Box 284, Beverly, Massachusetts.

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4. Petition as required by USSC Rule 23.

(a) Opinions of Courts below.
(i) Opinion of USDC, Concord, NH (Appendix)
(ii) Opinion of USCofA, 1st Dist.(Appendix)

(b) Grounds for Jurisdiction.

(i) Court of Appeals judgment was entered January 27, 1969.

(ii) Court of Appeals denied Petition for Rehearing as of February 20, 1969 (ruled date of entry); mandate stayed temporarily to permit Petition for Certiorari within time allowed by law.

(iii) The petition is taken under the United States Constitution generally (especially Art. III, Sect. 2, and Amendments V and VI); under the laws governing removal in civil rights cases (especially 28 USC 1446 and 1443); under appeal or certiorari rights (especially USC 28 Pars. 2101(d) and (f); USC 28 Par. 1253; USC 28 1257(2); USC 28 Par. 2282; USC 28 Par. 2281; and USC 28 1254(1), and generally in accord to the right of a citizen to seek justice from the Supreme Court.

(c) Questions Presented for Review. The Petition involves judgment against appellant (petitioner) before a three judge United States Court of Appeals, in No. 7217, State of New Hampshire vs Edward P. Bentley; said judgment in turn being an appeal from the USDC, NH, on the same case, concerning appellant's right to remove the original State action from the State Courts to the Federal Court. Essential points of Constitutional law were involved, as follows:

(i) The right of appellant to receive a "direct" jury trial, upon so requesting, upon terms no different than non-jury trial offered in lower court, and without prior trial or punishment in such non-jury lower court, under the Federal Constitutional rights (especially Art. III, Sect. 2 and Amendment VI), or, alternatively, the right of appellant to remove the case to the Federal Courts under appropriate statutes, especially 28 USC Par. 1443, to protect appellant's Federal and Constitutional civil rights against infringement under State law.

(ii) Failure of the State of New Hampshire to provide adequate and simple remedies to protect appellant against the accumulation of "multiple offense"

charges, sanctioned by State statute, issuable at the discretion of the police, and not effectively reviewable by responsible State courts or other process in such manner as to protect appellant in his essential Constitutional rights under sensible due process of law, again justifying removal under USC Par. 1443.

The removal rights claimed under (i) above were denied by the District Court and specifically by the Court of Appeals; the removal right of (ii) above was only generally denied by the District Court and also by the Court of Appeals, even though appellant's Petition for Rehearing directly sought a clear ruling on this second point.

(d) Provisions of Law Involved in Case.

(i) United States Constitution, Art. III, Sect. 2.

(ii) United States Constitution, Amendments V and VI.

(iii) USC 28 Pars. 1446 and 1443.

The above are cited verbatim in the appendix.

(e) Concise Statement of Case. Appellant was originally accused, by a police officer, of violating the New Hampshire statutes regarding proper licensing as an automobile driver and registration of an automobile, even though appellant properly met all such requirements for the State of Massachusetts, and had a legal residence in Massachusetts. Subsequently, before hearings on the first charge, the same officer issued a second citation on the same counts.

Appellant maintained that the charge was not justfied, even under New Hampshire law, and formally sought a jury trial on the basic issue; it proved, however that such jury trial could be demanded, under the precedent set by N.H. v. Despres (NH Supreme Court Ruling) only by appeal for a trial De Novo, after submitting to a non-jury trial, possibly resulting in need for bail, possible imprisonment pending jury trial, and possible

other temporary penalties not imposed before the non-jury trial.

Appellant then attempted to obtain court action to prevent further action by the Police as regarded issuance of multiple warrants, with no success, and, upon appealing to the Superior Court in writing, was told his appeal would simply be filed until lower court action was completed. Attempts to see a Superior Court judge were refused.

Appellant then was forced to remove two of his sons from the High School in Exeter, since he had been informed that their attendance there was the justification for the charges. In the hope of getting them back in school, appellant Petitioned For Removal and sought a Federal Court order to permit such return. Unfortunately, before action could be taken, the United States District Court Judge in Concord, N.H. died, and appellant had no choice, if the young men were not to have to repeat a year of school, but to return everyone to Massachusetts.

(f) Each of the Federal questions involved was raised in the State Court by written pleadings; none were read before denial by the Court at the District Court of Exeter level; none were accepted, except for filing, at the Superior Court level. At the State Supreme Court, it was found that N.H. vs. Dosreis, recently had ruled that the Question of (c)(i) was settled, against the appellant's jury trial claim, and against protection against harm to the appellant pending jury trial De Novo .

Accordingly, both of the Federal questions, regarding jury trial right, and protection under due process, were raised timely and properly so as to give the Court jurisdiction to review the lower court judgment on writ of certiorari, if not on the parallel Appeal being presented by appellant.

(g) The Par. (f) above covers jurisdiction, under USC 28 Par. 1443 and 1446, for the petition for removal; further United States Court judgment stem from this.

(h) Technical reasons for allowance of this writ have been covered above. The true reason why the Court should allow this, and similar writs, regardless of the welfare of the appellant, lies with the future of the young people of our nation-and elsewhere; if the Constitutional process is to mean anything to them, it must be respected- and only the Courts, especially the Supreme Court of the United States, can show that it is respected.

The appellant has four fine sons, and a pretty little daughter. His motives in this case and in his other actions should be obvious.

Magna Carta forms the basis for our law, based first, of all, on the right to an honest jury trial. Secondly, "the Barons came armed" to avoid dungeons instead of a Charter. "Excessive bail" meant, if you had friend or a good reputation, you were free until jury trial.

Our Constitution was taken from such sources; if wrong, it may and should be amended; if right, it should be upheld- and it is the duty of this Court to uphold it, for there is no one else- unless, as has been occurring, young people try to uphold it with their own personal effort, despairing.

Edward P Bentley

Edward P. Bentley
Defendant, Appellant

APPENDIX TO PETITION.

4.(a)(i). Opinion of USDC, Concord, NH.

The motion to dismiss the Petition for Removal is granted and the case is remanded to the District Court for Exeter in the County of Rockingham and State of New Hampshire.

The Petitioner was charged in the Exeter District Court, County of Rockingham and State of New Hampshire, with two offenses: (1) Operating a motor vehicle without an operator's license in violation of RSA 261:1. Based upon statements made by counsel at the hearing on September 3rd in the United States District Court, it is found that no plea of any kind was entered by the Petitioner in the Exeter District Court: the Petitioner informing the District Court Judge that he was going to petition for removal to the United States Federal District Court.

The Petitioner bases his Petition for Removal on four grounds:

(1) Denial of his constitutional right to a jury trial in the Exeter District Court;

(2) Failure of the Exeter District Court to protect the rights of the defendant pending a decision on the merits in that Court. In this connection, the petitioner alleges that he was, in fact, threatened with summons after summons by the police on the same two charges;

(3) Failure by the State of New Hampshire to afford to the defendant, and consequently to his sons, equal protection of the laws guaranteed to him under the Federal Constitution. It is the claim of the defendant that he has had to leave New Hampshire in order to avoid police harassment; and

(4) Denial of the Petitioner's civil rights, resulting in a violation of 28 U.S.C.A. Par. 1443 (Civil Rights Act).

Under New Hampshire law, the defendant has an absolute right to a jury trial and trial de novo in the New Hampshire Superior Court if the District Court of Exeter finds him guilty of the offenses with which he is charged.

The Petitioner argues strenuously that his constitutional right to a jury trial includes the right to a jury trial in the District Court. This Court can find no authority for such a position. The most recent United States Supreme Court case on this subject, Duncan v. Louisiana, 391 U.S. 145, holds only that a person is entitled to a jury trial in state criminal prosecutions where a sentence as long as two years may be imposed without a jury trial at all. It is important to point out that in the State of New Hampshire, the defendant in a criminal case is entitled to a jury trial in any type of a case, including a misdemeanour, and specifically including a traffic violation or license violtaion upon appeal to the Superior Court after an adverse finding in the District Court. Under these circumstances, it is hard for the Court to understand the Petitioner's argument that his right to a jury trial under the Fourteenth Amendment has been denied him is the State of New Hampshire.

There is no evidence on which this Court can make any finding that the rights of the Petitioner were either abused or not protected by the State of New Hampshire. The Petitioner, in argument, made some statements as to what the District Judge said in regard to a series of charges pertaining to the same offense. Even assuming that Petitioner's statements were true, there was no attempt by the Petitioner to correct any of the alleged deficiencies in the administration of justice in the District Court for Exeter in the county of Rockingham. There has been no showing at all that the defendant or his family have been denied the equal protection of the laws by the State of New Hampshire.

This Court finds and rules that 28 U.S.C.A. Par. 1443 (Civil Rights Act) does not apply to this type of case.

Hugh H. Bownes
United States District Judge

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4.(a)(ii). Opinion of US CofA, 1st Circuit.

Before Aldrich, Chief Judge; McEntee and Coffin, Circuit Judges.

Counsel. Edward P. Bentley, pro se: David H. Souter, Assistant Attorney General, with whom George S. Pappagianis, Attorney General, was on brief, for appellee.

January 27, 1969

Per Curiam. The defendant's ability under 28 USC Par 1443 to remove to the federal court a state court prosecution for a claimed offense against state motor vehicle laws before he has been through the various steps of the state procedure is strictly a matter of what Congress has, or has not, provided by the Statute and is not a constitutional right. We believe it clear that the defendant has no case within the statute he seeks to rely on, which involves a special exception and a very different sort of right. Georgia v. Rachel, 1966, 384 U.S. 780.

While, unfortunately, the defendant's apparent misunderstanding of the law is such that we may not be able to satisfy him that he is laboring under serious misapprehension, we do observe this to be the fact. He has no constitutional right to a "direct jury trial". The defendant may lose his license or registration first and get whatever hearing he is ultimately entitled to afterward. This seems to be the true effect of the State procedure, if it be assumed, which we need not decide, that he is entitled to a jury trial on this issue. Such order of events is not unconstitutional. See Wall v. King, 1 Cir., 1953, 206 F.2d 878, 833, cert. denied 346 U.S. 915.

Affirmed.

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4. (d)(i) United States Constitution, Art. III, Sect. 2. (Par. 3.) "The trial of all crimes, except in Cases of Impeachment, shall be by Jury;---"

4. (d)(ii) United States Constitution, Amendments V and VI.

V. Rights of Accused in Criminal Proceedings. "No person shall--- be deprived of life, liberty, or property, without due process of law--".

VI. Right to Speedy Trial, Witnesses, etc. In all criminal prosecutions, the accused shall enjoy the right

to a spoedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense..

4. (d)(iii) USC 28 Pars. 1443 and 1446.

(P. 1443. Civil Rights cases) Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the District Court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(P. 1446(c) Procedure for Removal) The petition for removal of a criminal prosecution may be filed at any time before trial.

4. (i) Opinions in Companion Cases or Precedents.

(il) Georgia v. Rachel, USSC (16 L. Ed. 2d 925, 934)

---"The provisions in Par. 901 of the Civil Rights Act of 1964 (28 USC par 1447(d) for appeal from remand orders in Civil Rights removal cases was enacted by Congress so as to give the Federal reviewing Courts a new opportunity to ascertain the scope and meaning of the removal statutes (USC 28, 1443)---

--- "The provision in Par. 901 of the Civil Rights Act of 1964 (28, USC, Par. 1447(d)) that an order

remanding a civil rights case to the State Court from which it was removed, pursuant to 28 USC 1446, shall be reviewable by appeal or otherwise" opens the way for immediate appeal". ---

---Removal, under USC 28 Par. 1443(1). of a State criminal prosecution to the appropriate Federal Court-----is warranted only if it can be predicted, by reference to a law of general application that the defendant will be denied or cannot enforce the specified Federal rights in the State Courts; s State statute authorizing the denial affords an ample basis for such a prediction".---

(12) Greenwood v. Peacock (16 L. Ed. 2d 944).

---(Special note: This case is very pertinent to appellant's case. Five justices of the USSC ruled that the civil rights cases concerned should not have been removable, a Court of Appeals having already ruled to the contrary. The case is a direct companion to Georgia v. Rachel.

Four USSC Justices dissented vigorously, and stated that the allegations of the removal petition were sufficient to make out a case for removal, and that hearings on the truth of these allegations were required. Quotations from the case follow below.---

---By making appealable orders remanding to a State Court civil rights cases removed to a Federal Court, Congress invited a contemporary judicial consideration of the meaning of the unchanged provisions of the removal statute 28 USC 1443.---

---(majority opinion) Under 1443(1) the vindication of the defendant's Federal rights is left to the State Courts, except in the rare situation where it can be clearly predicted by reason of a pervasive and explicit State or Federal law that these rights will inevitably be denied by the very act of bringing the defendant to trial in the State Court.---

---Such removal petitions could, of course, be filed not only by negroes, but also by members of the Caucasian or any other race.---

(12a) (Greenwood vs Peacock, Four USSC Justices dissenting; separate opinion, by Mr. Justice Douglas, with whom the Chief Justice, Mr. Justice Brennan, and Mr. Justice Fortas concurred.)

---the Court of Appeals reversed (347 S 2d 670) holding that the allegations were sufficient to make out a case for removal and that hearings on the truth of the allegations were required----

--- I agree with that result. As I will show, the Federal reasoning was designed from the beginning to afford some protection against local passions and prejudices by the important pre-trial Federal remedy of removal and that the civil rights legislation with which we deal supports the mandate of the Court of Appeals.---

--- swift enforcement of the Federal right is imperative if the guarantees are to survive and not be slowly strangled by long, drawn out, costly, cumbersome proceedings, as the Congress feared might result in State courts. The delays in State criminal process, the perilous vicissitudes of litigation in the State courts, the onerous burdens on the poor and the indigent who usually espouse unpopular causes- these threaten to engulf the Federal guarantees. It is in that light that 1443(1) should be read and construed.----

--- Yet even if the "is denied" clause is read more restrictively, the present cases constitute a denial of Federal "civil rights in the courts" of the offending State, within the meaning of 1443(1). The local judicial machinery is implicated even prior to actual trial, by issuance of a warrant or summons, by commitment of the prisoner, or by accepting and filing the information or indictment. Initiation of an unwarranted judicial proceeding to suppress or punish the assertion of Federal civil rights, makes out a case of "civil rights denied" within the meaning of 1443(1). Prosecution for a Federally protected act is punishment for that act. The cost of proceeding court by court until the Federal right is vindicated is great; restraint of liberty may be present; the need to post bond may be present; the hire of a lawyer may be considerable; the burden of the State Court proceedings may entail

destruction of civil rights---; the presence of an unresolved criminal charge may hang over the head of the defendant for years.

In my view, 1443(1) requires the Federal court to decide whether the defendant's allegation that "the State court will not fairly enforce his equal rights" is justified; if the defendant is unable to demonstrate his inability to enforce his rights, the case is remanded to the State courts. But if the Federal Court is persuaded that the State Court indeed will not make a sustained effort to apply the paramount Federal law pertaining to equal civil rights, then the Federal Court must accept the removal and try the case on the merits. The Federal Court in a removal case must act with restraint, but to deny relief in the cases now before it is, in view of the allegations made, to aggravate a wrong by compelling these defendants to suffer the risk of unwarranted trial, by allowing them to be held under improper charges, and imprisoned, if the State desires, for an extended period awaiting trial. The risk that the State Courts will not promptly dismiss the prosecution was the Congressional fear. The Court defeats that purpose by giving a narrow interpretation to 1443(1). These defendant's Federal civil rights may, of course, ultimately be vindicated if they persevere, live long enough, and have the patience and the funds to carry their cases for some years through the State Courts to this Court. It was precisely that burden that Congress undertook to take off the backs of this persecuted minority and all who espouse the cause of their equality."

(13) NH vs. Despres (107, NH 297)

--Law requiring suspension of motor vehicle license after conviction in district or municipal court and pending appeal to superior court for a trial by jury is not unconstitutional impairment of right to trial by jury but is reasonable regulation in interest of Public safety. Const (NH) pt. 1, art 15; pt. 2, art 77; RSA 262 -A:65(supp).

---Statutory scheme for trial of misdemeanours, which provides trial in the first instance in municipal or district courts with absolute right of appeal to

superior court where trial is de novo before jury conforms with constitutional authorization to legislature." Const. (NH) pt 1, art 15; pt 2, art 77; RSA 262-A:62 (supp), 262-A:65(supp), 512: 18 (supp)-State vs DosPres.